

**THE HONORABLE RONALD B. LEIGHTON**

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

GORDON HEMPTON,

Plaintiff,

v.

POND5, INC., A DELAWARE  
CORPORATION; AND POND5 USER  
CKENNEDY342, A CORPORATION OR  
INDIVIDUAL OF TYPE UNKNOWN,

Defendants.

No.: 3:15-cv-05696-RBL

**SECOND DECLARATION OF  
MIKE PACE IN SUPPORT OF  
POND5, INC.'S MOTION FOR  
SUMMARY JUDGMENT**

I, Mike Pace, declare and state as follows: I am over the age of 18 and am competent to testify to the matters set forth herein. I am the Audio Development Manager of Pond5, Inc. ("Pond5"). I submit this Second Declaration in Support of Pond5's Motion for Summary Judgment.

1. I am generally familiar with the services that Audio Magic provides. Pond5 contracts with Audio Magic to provide Automatic Content Recognition ("ACR") services for some of the content hosted at Pond5.com. I am also familiar with industry standards relating to the use of Audio Magic for ACR services. It is not a recognized standard within the industry of sale and licensing of sound effects to utilize ACR services for sound effects. It was not the industry standard in 2014. Pond5 does not utilize Audio Magic's services for sound effects because the database against which sound effects are compared is not of sufficient quantity for

SECOND DECLARATION OF MIKE PACE IN  
SUPPORT OF DEFENDANT POND5 INC.'S  
MOTION FOR SUMMARY JUDGMENT - 1  
(3:15-cv-05696 RBL)

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Pond5 to be confident in the results that we would receive. Additionally, the service that Pond5 subscribes to does not allow for audio content of less than 22 seconds to utilize Audio Magic's services and most sound effects are of a shorter duration than 22 seconds.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this Declaration was executed on May 20, 2016, at New York, New York.



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Mike Pace

**CERTIFICATE OF SERVICE**

I hereby certify that on the date set forth below, I electronically filed the foregoing with the Clerk of the Court using the CM/CF system which will send notification of such filing to the following:

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DATED this 20th day of May, 2016.

/s/ Larry E. Altenbrun  
Larry E. Altenbrun, WSBA #31475